IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
Criminal Writ Petition No.485 of 2007

Smt.Shahina Parveen Waris Khan .. .. Petitioner

Versus

1. The State of Maharashtra
2. A.N. Roy,
   The Commissioner of Police,
   Brihan Mumbai.
3. The Superintendent of Prison
   Thane Central Prison, Thane.
4. The Superintendent of Prison,
   Nasik Road Central, Nasik. ... ... Respondents

Ms.A.M.Z. Ansari for Petitioner.

Mr.D.S. Mhaispurkar, Additional Public Prosecutor for State.

CORAM : DR.S. RADHAKRISHNAN &
SMT.ROSHAN DALVI, JJ.

Date of reserving the judgment : 24th September 2007

Date of pronouncing the judgment : 1st October 2007

JUDGMENT : (Per Smt.Roshan Dalvi, J.)

1. The Petitioner has challenged the detention order of her husband made under Detention Order No.169/PCB/DP/Zone-XI/2006 dated 27.10.2006 and has applied for issue of a writ of Habeas Corpus in that behalf. It is the case of the Petitioner that the detention order suffers from the vice of non-application of mind as all the documents, more specially a medical certificate has not been considered in proper perspective. It is also the case of the Petitioner that the preparation of the case against the detenu suffers from the vice of delay inasmuch as the confidential statements of the two witnesses A and B relied upon by the Respondents to make out the case against the Petitioner have been recorded after much delay after his release on bail in the main case against the detenu.

2. Though several other grounds are also cited in the Petition, the Advocate of the Petitioner Ms.Ansari based her case on the aforesaid two grounds alone. These grounds can be considered separately.

3. **Non-application of mind** : The Petitioner was arrested on

26.8.2006 pursuant to a complaint registered with the relevant Police Station, inter alia, under the provisions of Sections 384 and 506 (II) of the Indian Penal Code under CR No.118/06. It has been the case of the complainant, one Manish Shyam Sharma, that the complainant was in the business of repairing mobile telephones. The detenu approached him and demanded to refill card of Airtel Mobile of Rs.120, Rs.125 and Rs.350, then a the demo card of Airtel Company and later a Nokia 6600 model mobile phone. Though the detenu was given what he demanded he never made payment of any of the purchases. For the last of the demands, the Complainant made bold to inform the detenu the price of the mobile phones sought to be purchased by him. The detenu did not make any payment but demanded the mobile phone. He threatened the complainant and abused him. The complainant mustered courage and submitted a written complaint against the detenu in Malvani Police Station on 24.8.2006. The detenu came to learn about it and so he attended the shop of the complainant and

abused and threatened him further. He again demanded the mobile phone without payment of costs. A case came to be registered on 26.8.2006 under CR No.118 of 2006 against the detenu under the aforesaid provisions at Charkop Police Station. The detenu came to be arrested. Statements of witnesses were recorded. On the next date it was a holiday. The detenu was produced before the Holiday Magistrate. He was remanded to the Police custody only till the next day. On 28.8.2006 he was again produced before the regular Magistrate Court and remained to the judicial custody until 11.9.2006. The detenu filed a Bail Application on 27.8.2006 itself. The learned Magistrate released the detenu on bail on 28.8.2006 on payment of cash security of Rs.3,000/- and furnishing residential proof and attending before the Police Station on every Monday and Friday between 11.30 A.M. and 1.30 P.M. The detenu availed of the cash bail facility on the same day and and was released.

4. The detenu contended that he was ill. He was taken to the Municipal hospital. He was examined by the doctor in-

charge of the hospital then. A medical certificate/case paper with regard to the examination of the detenu came to be made and is a part of the record sent by the Sponsoring Authority to the Detaining Authority as well as sent to the detenu himself to enable him to make his representation.

5. It is this medical certificate/medical case paper that Ms.Ansari on behalf of the detenu has relied upon. It is dated 26.8.2006. It shows the information provided by "self". It shows a history of abscess on left middle finger 3 days back and mild fever for 3-4 days with backache for 3 days and no other complaints. The detenu's blood-pressure has been recorded which is shown to be 110/70. His blood-pressure is, therefore, normal. The medical examination has shown a minor scratch abrasion on left middle finger. Aside from the above, the medical certificate shows no injury or malady of the detenu. However, the detenu has been advised, inter alia, for blood test for M.P. (Malarial Parasites). Amongst the recommended medicines is chloroquine (an ordinary, across-the–counter tablet), for malaria, Rentac (an

ordinary, across–the-counter tablet for acidity).

6. It is based upon such medical certificate/case paper that the detenu has contended that he was ill with malaria and he could never have threatened as alleged by the complainant in the complaint and, consequently, the entire case of extortion and criminal intimidation made out against him is false and fabricated.

7. It falls upon us to first consider the purport and import, if any of such medical certificate/case paper, which has been made after the arrest of the Accused. This is evident from the first page of the medical certificate showing the case of the detenu being “Medico Legal”. Hence, after the arrest, the Accused was taken either upon his request or as a matter of course to the Municipal hospital. The Accused himself gave his own history. He did not allege any ill-treatment or harassment. He did now show any injury on his person, except the abscess on his middle finger. The history given by the detenu would, at once, show that the detenu had no symptoms of malaria or any such or disorder. He had mild

fever and not high fever. He could have committed the offences that he was charged with in the state of health that he was. The minor scratch noticed by the doctor is of little consequence with bodyache and mild fever along with the abscess on the finger. The detenu could not be prevented from carrying on his activities.

8. Much is made about the fact that chloroquine has been recommended to be taken. Ms.Ansari argued that, that showed that the Accused suffered from malaria. In fact, the other recommendation of the doctor showing Rentac tablet to be taken would show that the Accused was suffering from acidity. The detenu has not taken the MP test after his release on bail and not produced anything to show that he did suffer from malaria. A reading of the medical certificate/case paper does now show the case made out by his Advocate.

9. The medical certificate/case paper was one of the documents placed before the Detaining Authority. Its worth has been seen. The contention on behalf of the Petitioner

that this document, though important, has not been considered whilst passing the detention order, does not appear to be at all attractive. The Petitioner must show that the document deserves more attention that it has got from the Detaining Authority. This would be in showing that if the document was considered, the Detaining Authority could have taken another view against the detenu. We have considered this document in great detail. A document such as the above medical certificate/case paper would not have changed the subjective satisfaction of the Detaining Authority.

10. The lack of reference to this document specifically in the detenion order does not show any lack of application of mind. Such medical papers are always a part of the record of a criminal case since the Accused in Police custody are routinely produced before the civil/municipal hospital to show that they have not suffered any injury by any third degree measures used by the Investigating Officer. In this case, the detenu showed a history of mild fever, bodyache

and abscess. He made no other complaints. Mere recommendation of a tablet, which could be used for malaria or acidity, cannot show the detenu being afflicted by disease such as to render him incapable of carrying out his activities. The Detaining Authority has rightly not given any importance to such ordinary, innocuous document.

11. Ms.Ansari drew our attention to an unreported judgment of ***Smt.Kulsum Mohd. Faimid Qureshi vs. The State of Maharashtra & ors.*** **in Writ Petition No.1766 of 2006 dated 23rd April 2007** wherein the Division Bench held that the detention order suffers from the vice of the non-application of mind because it had not read a medical certificate or misread it. In that case the case made out against the detenu was of having given a blow with a knife on the left portion of the face of the complainant which was alleged to have caused a serious injury from his "nose to neck." A criminal case was registered against the detenu. A medical certificate was produced in that case. That was considered in the Bail Application taken out by the detenu

before the Sessions Court. The Sessions Court, after considering the medical certificate, observed that the injury could not be termed as serious because there was no injury from the “nose to neck” as made out in the complaint in that case. The Judge specifically observed that the medical case papers showed only a superficial linear abrasion on the left cheek. Such an injury was unlike the injury described in the grounds of detention. Hence, it could be seen that only the allegation of the complainant, to the complete exclusion of the documentary evidence which failed to corroborate his allegation, was alone considered. Hence, the detention order was ex facie without application of mind. Several cases had been filed against that detenu, in all of which he was acquitted. There was no fresh case after 1998 against the detenu until the case which came up for his detention in mid 2006. Considering all these facts, the Division Bench of this Court held that the medical certificate was misread by the Detaining Authority. Such misreading or even non-reading of such certificate would vitiate the detention order on the

ground of non-application of mind. In this case, a look at the bail application of the detenu being Bail Application No.258 of 2006 in CR No.118 of 2006 shows only that the detenu has been falsely implicated in the case due to the political rivalry on the basis of the false complaint of the complainant. It makes no reference to any debilitating illness, by which the detenu could never have committed the offences for which he was charged.

12. Hence, the first ground in the Petition cannot be accepted.

13. **Delay** : It is contended on behalf of the Petitioner that the detenu was arrested on 26.8.2006. He moved the Bail Application before the concerned learned Magistrate on 27.8.2006. He was granted bail on 28.8.2006. On 4.9.2006 the Sponsoring Authority applied for certified copy of the Bail Application of the detenu. The certified copy was given on 6.9.2006. It is further contended that this exercise was done as a prelude to the detention order.

14. Ms.Ansari has drawn our attention to the fact that the

statement of witness "A" was recorded on 24.9.2006, which was for an incident which took place in the third week of May 2006. The statement of witness "B" was recorded on 30.9.2006, which was for an incident which took place in mid June 2006. It is also contended that this statement recorded 18-24 days after the receipt of the certified copy of the order of bail shows the fabricated and got up case made by the Sponsoring Authority to the Detaining Authority, based upon which the detention order is passed. The detention order passed so many days after the detenu was released on bail suffers from the vice of delay.

15. Ms.Ansari has drawn our attention to a number of judgments with regard to this ground. In the case of ***Pradeep Nilkanth Paturkar vs. S. Ramamurthi & ors.*** **AIR 1994 Supreme Court 656**, it has been held that the detention order passed 5 months and 8 days after the registration of the last case against the detenu and more than 4 months from the submission of the proposal was too delayed and deserved to be set aside on that ground. That

case was of the detenu being engaged in the business of selling illicit liquor. Five criminal cases under the Bombay Prohibition Act, 1949 were filed against him for occurrences which took place between October 1990 and February 1991. Witnesses A and B were examined on 26.3.1991 for an incident of October 1990 and February 1991. Witnesses C and D were examined on 27.3.1991 for an incident of October 1990 and January 1991. Witness E was examined on 20.3.1991 with regard to an incident of February 1991. In that case, the detenu had as many as five cases against him. He was arrested and released on bail in each of them. Long after the detenu was released on bail in all the five cases, the statements of the witnesses came to be recorded as in-camera statements. It was, therefore, held that such delay vitiated the detention order.

16. In this case, the detenu has not been charged with having committed offences which can be termed as petty offences under the Bombay Prohibition Act. The detenu has been charged with having committed offences of far more

grave in nature which were of extortion and criminal intimidation. There has been only one case against the detenu before the in-camera statements came to be recorded and which were used by the Respondents against the detenu for passing the detention order. In the time gap between the release of the detenu on bail and the actual recording of statement, the detenu could have had a brush against the law in other cases as well.

17. In this case, the victims would have been reluctant to complain against the detenu unless they were given the required assurance that their names would not be revealed. We may mention that the cases of extortion and criminal intimidation are the ones most liable for the abuse of repetition. These are the offences in which witnesses, by its very nature, would be intimidated into speaking the truth out of fear. These offences are committed by way of a career in crime. In fact, the entire malaise of having to record such statements could be reduced or even eliminated if for such offences bail is not granted as easily as has been granted in

this case to the detenu. Since after a single case the Sponsoring Authority undertook the endeavour to find out whether there were witnesses who would make statements, which would otherwise not been brought to light, and underwent the exercise of recording the statements and have them verified the time taken of a mere 18-24 days in recording the statements cannot be said to suffer from any delay and the detention order, which was passed within a month of recording of the statements would not also suffer from the vice of delay.

18. In the case of ***Smt.Vijaya Raju Gupta vs. Shri R.H. Mendonca & ors.*** **2001 All MR (Cri) 48**, the Division Bench of this Court held that the period of time between the release on bail of the detenu and recording of the statement, which was three weeks, suffers from the vice of delay. In that case, the detenu was arrested on 16.6.1999. He was released on bail 15 days thereafter on 2.7.1999. He availed of bail on 3.7.1999. The in-camera statements were recorded on 25.7.1999 and 26.7.1999 for the incidents that took place in

May and June 1999. That was also a case, inter alia, under Sections 387 and 506(II) of the Indian Penal Code. In that case, therefore, the Sponsoring Authority had respite of two weeks to commence any inquiry and record any confidential statements before the detenu could have released on bail. That exercise was not undertaken. The exercise undertaken after the detenu was released on bail after having been in custody of two weeks. Similar observations, as in that case, therefore, are not justified in this case in which the detenu, though having been charged of offences of criminal intimidation and extortion, came to be released a day after his application for bail was made.

19. In an unreported judgment in the case of ***Haroon Mohammed Naim Choudhary vs. Shri A.N. Roy & ors.*** **in Writ Petition No.260 of 2006 dated 28th July 2006** also the detenu was in custody for as long as two months. In-camera statements were recorded 2-4 days after his release. It was held that no recording of statement during the period the detenu was in custody tantamounted to delay in making

out a case for sponsoring detention. In that case, the CR came to be lodged on 24.1.2005. The accused was arrested on 11.2.2005. He was released on bail on 28.4.2005. The statement of witness came to be recorded on 2.5.2005 for the incidents which took place in January 2005, resulting in a detention order dated 7.7.2005. A glance at these dates itself would show that a lot of time transpired when the detenu remained in custody. Nothing was done during that period. Statements were recorded post-haste thereafter. It took another two months to pass the detention order. As against that, in this case, the accused has remained in custody for but two days. The statements have been recorded within a month of his being arrested as well as being released on bail. The detention order is passed within a month thereafter. There is, therefore, no delay which can vitiate the detention order.

20. Even in the case of ***Austin William Luis Pinto vs. Commissioner of Police, Greater Mumbai & ors.*** **2005 All MR (Cri) 28**, the Division Bench of this Court held that the

detention order being vitiated on the ground of delay because in that case the accused was in custody from 1.5.2003 to 2.7.2003. Statements of the witnesses came to be recorded on 12.7.2003 and 14.7.2003 for incidents that took place in April 2003. The case is completely distinguishable from this case.

21. Neither of the grounds which challenges the detention order is, therefore, acceptable or maintainable. The detention order cannot, therefore, be set aside. The Petition is dismissed. Rule stands discharged.

(DR.S. RADHAKRISHNAN, J.)

(SMT.ROSHAN DALVI, J.)